

§ 400.44

15 CFR Ch. IV (1–1–15 Edition)

this section, such existing arrangements shall be terminated or brought into compliance no later than February 28, 2014.

EFFECTIVE DATE NOTE: At 77 FR 12139, Feb. 28, 2012, § 400.43 was added. Paragraph (f) contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 400.44 Zone schedule.

(a) *In general.* The zone grantee shall submit to the Executive Secretary (in both paper and electronic copies) a zone schedule which sets forth the elements required in this section. No element of a zone schedule (including any amendment to the zone schedule) may be considered to be in effect until such submission has occurred. If warranted, the Board may subsequently amend the requirements of this section by Board Order.

(b) Each zone schedule shall include:

(1) A title page, which shall include the name of the zone grantee and the date of the current schedule;

(2) A table of contents;

(3) Internal rules/regulations and policies for the zone;

(4) All rates or charges assessed by or on behalf of the grantee;

(5) Information regarding any operator which has an agreement with the grantee to offer services to the public, including the operator's rates or charges for all zone-specific services offered; and

(6) An appendix with definitions of any FTZ-related terms used in the zone schedule (as needed).

(c) The Executive Secretary may review the zone schedule (or any amendment to the zone schedule) to determine whether it contains sufficient information for zone participants concerning the operation of the zone and the grantee's rates and charges as provided in paragraphs (b)(3) and (b)(4) of this section. If the Executive Secretary determines that the zone schedule (or amendment) does not satisfy these requirements, the Executive Secretary shall notify the zone grantee. The Executive Secretary may also conduct a review under 400.45(b).

(d) Amendments to the zone schedule shall be prepared and submitted in the

manner described in paragraph (a) of this section, and listed in the concluding section of the zone schedule, with dates. No rates/charges or other provisions required for the zone schedule may be applied by, or on behalf of, the grantee unless those specific rates/charges or provisions are included in the most recent zone schedule submitted to the Board and made available to the public in compliance with paragraph (e) of this section.

(e) *Availability of zone schedule.* A complete copy of the zone schedule shall be freely available for public inspection at the offices of the zone grantee and any operator offering FTZ services to the user community. The Board shall make copies of zone schedules available on its Web site.

(f) *Delayed compliance date.* The compliance date for the requirements of this section shall be February 28, 2014.

§ 400.45 Complaints related to public utility and uniform treatment.

(a) *In general.* A zone participant may submit to the Executive Secretary a complaint regarding conditions or treatment that the complaining party believes are inconsistent with the public utility and uniform treatment requirements of the FTZ Act and these regulations. Complaints may be made on a confidential basis, if necessary. Grantees (and persons undertaking zone-related functions on behalf of grantees, where applicable) shall not enter into or enforce provisions of agreements or contracts with zone participants that would require zone participants to disclose to other parties, including the grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable), any confidential communication with the Board under this section.

(b) *Objections to rates and charges.* A zone participant showing good cause may object to any rate or charge related to the zone on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. If necessary, such a complaint may be made on a confidential basis pursuant to § 400.45(a). The Executive Secretary shall review the complaint and issue a report and decision, which

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shall be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The primary factor considered in reviewing fairness and reasonableness is the cost of the specific services rendered. Where those costs incorporate charges to the grantee by one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties (using best estimates, as necessary). The Board will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.

§ 400.46 Grantee liability.

(a) *Exemption from liability.* A grant of authority, *per se*, shall not be construed to make the zone grantee liable for violations by zone participants. The role of the zone grantee under the FTZ Act and the Board's regulations is to provide general management of the zone to ensure that the reasonable needs of the business community are served. It would not be in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault.

(b) *Exception to exemption from liability.* A grantee could create liability for itself that otherwise would not exist if the grantee undertakes detailed operational oversight of or direction to zone participants. Examples of detailed operational oversight or direction include review of an operator's inventory-control or record-keeping systems, specifying requirements for such a system to be used by an operator, and review of CBP documentation related to an operator's zone receipts and shipments.

§ 400.47 Retail trade.

(a) *In general.* Retail trade is prohibited in activated areas of zones, except that 1) sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated area of a zone under a permit issued by the zone grantee and approved by the Board, and 2) no permits shall be necessary for sales involving domestic, duty-paid or

duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by individuals working therein. The Executive Secretary shall determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause. Determinations on whether an activity constitutes retail trade shall be based on precedent established through prior rulings by CBP, as appropriate. Such prior rulings shall remain effective unless a determination is issued to modify their effect (after a notice-and-comment process, as appropriate). Determinations made by the Executive Secretary pursuant to this section shall be made available to the public via the Board's Web site.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Executive Secretary, who is authorized to act for the Board in these cases, after consultation with CBP as necessary.

(c) *Criteria.* In evaluating requests under this section, the Executive Secretary and CBP shall consider factors that may include:

- (1) Whether any public benefits would result from approval; and
- (2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§ 400.48 Zone-restricted merchandise.

(a) *In general.* Merchandise in zone-restricted status (19 CFR 146.44) may be entered into the customs territory of the United States only when the Board determines that the entry would be in the public interest. Such entries are subject to the customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c(a), 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board shall consider:

- (1) The intent of the parties;
- (2) Why the merchandise cannot be exported;
- (3) The public benefit involved in allowing entry of the merchandise; and
- (4) The recommendation of CBP.